

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Shelton	Team: Squad #11	CCRB Case #: 201907725	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 08/16/2019 8:55 PM, Friday, 08/16/2019 8:59 PM	Location of Incident: [REDACTED]	Precinct: 25	18 Mo. SOL 2/16/2021	EO SOL 10/3/2021	
Date/Time CV Reported Thu, 08/29/2019 12:16 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 08/29/2019 12:16 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Timothy Gaven	4659	934913	GANG MN
2. SGT Michael Pomerantz	04481	947364	GANG MN
3. DT3 Timothy Donohue	07267	932568	GANG MN

Officer(s)	Allegation	Investigator Recommendation
A.SGT Michael Pomerantz	Abuse: At East § 87(2)(b) in Manhattan, Sergeant Michael Pomerantz stopped § 87(2)(b) [REDACTED]	[REDACTED]
B.SGT Michael Pomerantz	Abuse: At East § 87(2)(b) in Manhattan, Sergeant Michael Pomerantz stopped § 87(2)(b) [REDACTED]	[REDACTED]
C.DT3 Timothy Gaven	Discourtesy: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
D.DT3 Timothy Gaven	Force: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
E.DT3 Timothy Gaven	Force: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven restricted § 87(2)(b) [REDACTED]'s breathing.	[REDACTED]
F.DT3 Timothy Gaven	Abuse: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven threatened § 87(2)(b) [REDACTED] with the use of force.	[REDACTED]
G.DT3 Timothy Donohue	Force: At East § 87(2)(b) in Manhattan, Detective Timothy Donohue used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
H.DT3 Timothy Gaven	Abuse: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven refused to provide his shield number to § 87(2)(b) [REDACTED]	[REDACTED]
I.DT3 Timothy Donohue	Abuse: At East § 87(2)(b) in Manhattan, Detective Timothy Donohue refused to provide his shield number to § 87(2)(b) [REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
J.SGT Michael Pomerantz	Abuse: At East § 87(2)(b) in Manhattan, Sergeant Michael Pomerantz refused to provide his shield number to § 87(2)(b)	
K.DT3 Timothy Gaven	Force: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven used physical force against § 87(2)(b)	
L.SGT Michael Pomerantz	Abuse: At East § 87(2)(b) in Manhattan, Sergeant Michael Pomerantz interfered with § 87(2)(b)'s use of a recording device.	
M.SGT Michael Pomerantz	Abuse: Sergeant Michael Pomerantz failed to provide § 87(2)(b) with a business card.	
N.SGT Michael Pomerantz	Abuse: Sergeant Michael Pomerantz failed to provide § 87(2)(b) with a business card.	
O.DT3 Timothy Gaven	Abuse: En route to the 25th Precinct stationhouse, Detective Timothy Gaven threatened to damage/seize § 87(2)(b)'s property.	
P.DT3 Timothy Gaven	Force: En route to the 25th Precinct stationhouse, Detective Timothy Gaven used physical force against § 87(2)(b)	
Q.DT3 Timothy Donohue	Discourtesy: At the 25th Precinct stationhouse in Manhattan, Detective Timothy Donohue spoke discourteously to § 87(2)(b)	
R.DT3 Timothy Donohue	Abuse: At the 25th Precinct stationhouse, Detective Timothy Donohue threatened § 87(2)(b) with the use of force.	
S.DT3 Timothy Gaven	Force: At the 25th Precinct stationhouse in Manhattan, Detective Timothy Gaven hit § 87(2)(b) against a wall.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On August 29, 2019, § 87(2)(b) § 87(2)(b) filed the following complaint with the CCRB via the agency's website. She was a complainant non-witness and filed on behalf of her son, § 87(2)(b) who was § 87(2)(b)-years old at the time of the incident. Two other alleged victims in this complaint were § 87(2)(b)'s friends § 87(2)(b) and § 87(2)(b) who were also minors at the time of the incident.

On August 16, 2019, at approximately 8:55 p.m., § 87(2)(b) was with his two friends, § 87(2)(b) and § 87(2)(b) on the corner of § 87(2)(b) in Manhattan. As all three individuals were allegedly attempting to rent CitiBikes at a docking station, Det. Timothy Gaven, Det. Timothy Donohue, and Sgt. Michael Pomerantz of Gang Squad Manhattan North stopped them (**Allegations A and B: Abuse of Authority**, § 87(2)(g) Det. Gaven allegedly asked § 87(2)(b) "What the fuck are you doing on the bike?" (**Allegation C: Discourtesy**, § 87(2)(g) Det. Gaven took him to the ground and § 87(2)(b) allegedly sustained abrasions to his face, arms, and hands (**Allegation D: Force**, § 87(2)(g) Det. Gaven allegedly pressed on § 87(2)(b)'s back which allegedly restricted his breathing (**Allegation E: Force**, § 87(2)(g) Det. Gaven allegedly told him, "Before I break your arm, stop resisting" (**Allegation F: Abuse of Authority**, § 87(2)(g) Det. Donohue allegedly punched § 87(2)(b) once in the stomach (**Allegation G: Force**, § 87(2)(g) Det. Gaven handcuffed § 87(2)(b) and escorted him to their police vehicle as Sgt. Pomerantz also returned to the vehicle. § 87(2)(b) allegedly asked all three officers for their shield numbers and none responded (**Allegation H-J: Abuse of Authority**, § 87(2)(g) Det. Gaven allegedly pushed § 87(2)(b) onto the floor of the police vehicle (**Allegation K: Force**, § 87(2)(g) As § 87(2)(b) attempted to record the incident from outside the vehicle, Sgt. Pomerantz allegedly prevented him from doing so by rolling up the vehicle's windows and driving away (**Allegation L: Abuse of Authority**, § 87(2)(g) Sgt. Pomerantz did not offer business cards to § 87(2)(b) or § 87(2)(b) (**Allegations M and N: Abuse of Authority**, § 87(2)(g)

En route to the 25th Precinct stationhouse, § 87(2)(b) told officers multiple times that he had a CitiBike account and Det. Gaven allegedly told him he would throw his phone out of the window if he did not stop (**Allegation O: Abuse of Authority**, § 87(2)(g) Det. Gaven asked for § 87(2)(b)'s name which he refused to provide, prompting Det. Gaven to allegedly punch § 87(2)(b) in the face (**Allegation P: Force**, § 87(2)(g)

Det. Donohue parked at the 25th Precinct stationhouse and told § 87(2)(b) to shut up and allegedly called him, "a little prick" and "an asshole" (**Allegation Q: Discourtesy**, § 87(2)(g) § 87(2)(b) continued to express upset and Det. Donohue allegedly raised his shirt to reveal his holstered firearm (**Allegation R: Abuse of Authority**, § 87(2)(g) Just before entering the stationhouse, Det. Gaven allegedly pushed § 87(2)(b) against the building and told him he had to keep calm inside the stationhouse (**Allegation S: Force**, § 87(2)(g)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

§ 87(2)(b)

The investigation obtained exterior surveillance footage from the 25th Precinct stationhouse, the § 87(2)(b) none of which captured any allegations or otherwise pertinent events (BR 01-04). Cellphone footage was obtained from § 87(2)(b)'s cellphone via email (BR 05). Sgt. Pomerantz, Det. Gaven, and Det. Donohue did not have body-worn cameras to record the incident.

Allegation A – Abuse of Authority: At East § 87(2)(b) in Manhattan, Sergeant Michael Pomerantz stopped § 87(2)(b)

Allegation B – Abuse of Authority: At East § 87(2)(b) in Manhattan, Sergeant Michael Pomerantz stopped § 87(2)(b)

§ 87(2)(b) provided the investigation consent to speak to her son, § 87(2)(b) at which point he provided a phone statement and a verified statement alleging the following (BR 06-07). § 87(2)(b) and his friends, § 87(2)(b) and § 87(2)(b) approached a CitiBike docking station at the southwest corner of § 87(2)(b). All three individuals sat on docked bicycles, back-pedaling as they sat. For an initial ten seconds, § 87(2)(b) put his feet up on the locking mechanism by the front wheel and held the handlebars, turning them slightly left and right just to amuse himself, but realized that it looked suspicious so he stopped. § 87(2)(b) and § 87(2)(b) never attempted to pull any bicycles away from the docks or any other attempts to take the bicycles improperly. § 87(2)(b)'s mother, § 87(2)(b) paid for a monthly CitiBike account for him but § 87(2)(b) had no such account so the three of them sat on the bicycles for approximately three minutes deciding whether they should rent CitiBikes. § 87(2)(b) got off his bicycle to call his mother to ask to pay for a bicycle for § 87(2)(b). He stood in the street and called § 87(2)(b) but she did not pick up. § 87(2)(b) hung up and opened the CitiBike application on his cellphone to rent a bicycle. § 87(2)(b) heard yelling and he turned to see Sgt. Pomerantz, Det. Gaven, and Det. Donohue running toward him, § 87(2)(b) and § 87(2)(b) from across the street. Sgt. Pomerantz approached § 87(2)(b) and § 87(2)(b) as § 87(2)(b) interacted with Det. Gaven and Det. Donohue. He did not see what Sgt. Pomerantz and his friends did during the incident.

§ 87(2)(b) and § 87(2)(b)'s respective mothers provide the investigation consent to speak to their sons. § 87(2)(b) and § 87(2)(b) provided no details over the phone of what they and § 87(2)(b) were doing prior to officers' approach other than they sat on docked CitiBikes (BR 08-09). § 87(2)(b) recalled § 87(2)(b) calling his mother to ask to rent a bike for him. Det. Gaven and Det. Donohue approached § 87(2)(b) as Sgt. Pomerantz approached § 87(2)(b) and § 87(2)(b) at which point they both dismounted their respective bicycles. Sgt. Pomerantz told both of them to keep their hands visible and not to do anything. § 87(2)(b) stated he reached into his pocket to take his phone out and Sgt. Pomerantz repeated for him to keep his hand out of his pocket. Sgt. Pomerantz stood with § 87(2)(b) and § 87(2)(b) until § 87(2)(b) was placed into a police vehicle when he also entered the vehicle. Neither § 87(2)(b) nor § 87(2)(b) cooperated with providing a verified statement after each missing two scheduled interviews without sufficient notice or cause.

Det. Gaven stated that either he or Det. Donohue drove an unmarked vehicle, with the other in the rear seat, with Sgt. Pomerantz in the front passenger seat when they observed § 87(2)(b) and § 87(2)(b) walking toward the CitiBike docking station (BR 10). The area is known for gang-related criminal activity, especially involving teenagers. The officers stopped to see what the three teenagers would do out of general crime surveillance and there was nothing suspicious about them upon initial observations. Sgt. Pomerantz parked the vehicle directly across the street from the CitiBike docking station and officers had a clear view of the bicycles and § 87(2)(b) and § 87(2)(b). They observed the three individuals for less than five minutes. At various points, each individual grabbed the handlebars of bicycles and appeared to try and pull the front wheel out of the locking mechanism, a common technique to steal a CitiBike. Det. Gaven observed one individual hunched by the CitiBike rental terminal while another individual attempted to lift a bicycle out of the dock, which he described as another technique to steal a CitiBike. The individual hunched by stood there longer than Det. Gaven believed was necessary to rent a bicycle. Det. Gaven was familiar with such techniques as he previously observed multiple individuals use them to steal CitiBikes and had done research via the Google search engine. Det. Gaven and his partners discussed their shared observations, and decided to approach § 87(2)(b), § 87(2)(b) and § 87(2)(b) and exited the vehicle. Det. Gaven walked across the street until he was in arm-length of § 87(2)(b) who was pulling on a docked bicycle. He announced, "Police." Det. Donohue followed Det. Gaven as

Sgt. Pomerantz approached § 87(2)(b) and § 87(2)(b) and § 87(2)(b) were not initially free to leave and he did not hear or observe any specific interactions between them and Sgt. Pomerantz.

Sgt. Pomerantz provided consistent testimony as Det. Gaven barring the following points (BR 11). Officers initially observed § 87(2)(b) as they fit the description of usual perpetrators of assaults and larcenies in that area, of black teenagers and the fact that they repeatedly looked behind and around them as they approached the CitiBike docking station. Sgt. Pomerantz has observed approximately ten individuals steal a CitiBike by examining the locking mechanisms on a docking station and taking the handlebars and jiggling them left-and-right until locating the loosest mechanism. Once a loose mechanism is identified, the individual continues jiggling handlebars and moving the handlebars back-and-forth until it releases without proper payment. During the incident, Sgt. Pomerantz observed § 87(2)(b) and § 87(2)(b) all get onto bicycles and work the handlebars in this manner, including attempting to jerk the bikes backward and away from the locking mechanism. None of the three individuals attempted to scan any credentials or access the keypad at the terminal. Sgt. Pomerantz approached § 87(2)(b) and § 87(2)(b) to stop them. He identified himself as a police officer and told them to keep their hands out of their pockets, which they complied with. Sgt. Pomerantz believed he spoke with them but did not recall any verbal exchanges he had with the two individuals, other than possibly asking what they were doing with the CitiBikes.

Det. Donohue provided consistent testimony as Det. Gaven barring the following points (BR 12). As § 87(2)(b) and § 87(2)(b) fit the description of typical perpetrators of gang activity in the area, officers decided to briefly observe them and there was nothing specific that drew officers' attention to them. At least one of them attempted to pull several bikes away from their locking mechanisms by their handlebars and back wheels and walked up to the kiosk without accessing it. Det. Donohue has observed and arrested several individuals for stealing CitiBikes by pulling the back tire up and down and jiggling the handlebars, just as he observed the individual(s) do in this incident. Det. Donohue was not sure if all three individuals were free to leave at any point and explained that officers intended to investigate whether they were attempting to steal the bicycles. Det. Donohue had no knowledge of any interaction Sgt. Pomerantz had with § 87(2)(b) or § 87(2)(b) as his focus was solely on § 87(2)(b) the entire time.

§ 87(2)(g), § 87(4-b)

For a stop of an individual to be justified, an officer must have reasonable suspicion that the individual is committing, has committed, or is about to commit a crime (People v. De Bour, 40 N.Y.2d 210 [1976]) (BR 13). Officers had reasonable suspicion to stop an individual they suspected of attempting to steal a bicycle after they observed him attempt to pry the lock off the bicycle with a screwdriver (People v. Shuler, 98 A.D.3d 695 [2012]) (BR 14). In determining whether an officer acted reasonable and properly in stopping an individual, due weight must be given to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience (Terry v. Ohio, 392 U.S. 1 [1968]) (BR 15).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation C – Discourtesy: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that when officers approached him and his friends, they made loud guttural sounds. Det. Gaven grabbed § 87(2)(b) by his upper arms, shaking him back-and-forth in short vigorous motions and asked him, “What the fuck are you doing on the bike?” and let go of him. § 87(2)(b) responded, “What the fuck?,” and turned his attention back to his cellphone.

In their phone statements, neither § 87(2)(b) nor § 87(2)(b) testified to this allegation. § 87(2)(b) heard officers ask what § 87(2)(b) was doing on the bike to which § 87(2)(b) responded, “Suck my dick.” Det. Gaven told him, “Don’t tell me to suck your dick.” § 87(2)(b) only described Det. Gaven as yelling unintelligibly when he approached § 87(2)(b).

Det. Gaven announced, “Police,” once next to § 87(2)(b). He and his partners never screamed or yelled unintelligibly. § 87(2)(b) jumped away from Det. Gaven as if startled and cursed at the detective in a manner he did not recall. Det. Gaven again announced himself as a police officer and asked § 87(2)(b) what he was doing with the bicycle. He did not recall asking, “What the fuck are you doing on the bike?” or using the word “fuck” at any point. He did not recall hearing either of his partners use the word “fuck.”

Sgt. Pomerantz stated that Det. Gaven and Det. Donohue approached § 87(2)(b) as he approached § 87(2)(b) and § 87(2)(b). All three officers identified themselves as police officers, stating something to the effect of and asked what they were doing. Sgt. Pomerantz did not know who specifically asked the individuals what they were doing. § 87(2)(b) turned to Det. Gaven and Det. Donohue and stated, “Suck my dick.” He did not recall any officer ask, “What the fuck are you doing on the bike?” or use any profanity.

Det. Donohue stated he was directly behind Det. Gaven as they approached § 87(2)(b) from their vehicle. When within five feet of § 87(2)(b) who sat on a bicycle with his back to the street, Det. Gaven announced, “Police.” Detectives never got to ask § 87(2)(b) what he was doing, and Det. Donohue did not recall any officer asking, “What the fuck are you doing on the bike?” As soon as Det. Gaven announced himself as police, § 87(2)(b) got off the bike, turned to face the detectives and stated something to the effect of, “Suck my dick,” or “Fuck you.” He recalled no profanity by officers.

Allegation D – Force: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven used physical force against § 87(2)(b)

§ 87(2)(b) testified that as he continued to use his cellphone, Det. Gaven put his left arm around the back of § 87(2)(b)'s neck, bringing his left hand around to the left underside of his chin and pulled him down to the ground. No chokehold was alleged as Det. Gaven did not contact the front of § 87(2)(b)'s neck or his windpipe and § 87(2)(b)'s breathing was not restricted. § 87(2)(b)'s face hit the ground which caused an abrasion near his left eyebrow. § 87(2)(b) did not attempt to physically resist Det. Gaven up to this point. On August 18, 2019, § 87(2)(b) took photographs of several additional injuries he allegedly sustained during the incident, including the abrasions on his chin near his left eyebrow, which he provided during his September 4, 2019, CCRB interview when the investigation also took further photographs: an abrasion to his left elbow, abrasions to the palms of his hands, and abrasions on his right hand and left forearm (BR 16). He stated he refused medical

attention when a desk officer offered it to him at the stationhouse and did not receive any follow-up medical treatment for his injuries.

In their respective phone statements, § 87(2)(b) and § 87(2)(b) stated Det. Gaven and Det. Donohue both grabbed § 87(2)(b) and generally threw him to the floor. § 87(2)(b) stated § 87(2)(b)'s face hit the ground.

Det. Gaven stated that § 87(2)(b) turned to him and brought his tensed fists up in front of his upper body, indicating to Det. Gaven that § 87(2)(b) might be ready to fight. When Det. Gaven told him again that he was a police officer, § 87(2)(b) took a step back and Det. Gaven told him not to move. Det. Gaven grabbed one of § 87(2)(b)'s arms and § 87(2)(b) attempted to punch Det. Gaven but missed. Det. Gaven wrapped both his arms around § 87(2)(b)'s torso as they faced each other. Det. Donohue approached and physically engaged § 87(2)(b) to control his arms and body but Det. Gaven did not recall how Det. Donohue did this. Both officers told him to calm down and § 87(2)(b) flailed his arms around and away from his body and squirmed his upper body as if to break out of officers' holds. Det. Gaven and Det. Donohue could not control § 87(2)(b)'s arms and body while standing so they took him to the ground, providing them a tactical advantage in cuffing him that would prevent any further aggression or resistance. Det. Gaven did not recall how he and Det. Donohue executed this takedown and stated he might have pushed or pulled § 87(2)(b) down by his upper body or swept his legs with one of his own. Det. Gaven stated he never touched any part of § 87(2)(b)'s neck. Det. Gaven did not recall how § 87(2)(b) landed, but at some point, he was on his stomach. Det. Gaven did not recall if § 87(2)(b)'s head and/or face hit the ground. Once § 87(2)(b) was on the ground, Det. Gaven and Det. Donohue grabbed § 87(2)(b)'s arms. The only injury Det. Gaven recalled § 87(2)(b) sustaining was a scrape to one of his elbows during the struggle. Det. Gaven was presented the photographs § 87(2)(b) took of his alleged injuries and he did not recall observing any injuries to § 87(2)(b)'s face, chin, or hands nor any actions by officers that could have resulted in such injuries other than any incidental injuries to the takedown and struggle on the floor.

Det. Donohue stated that § 87(2)(b) initially pushed Det. Gaven's chest and attempted to punch him, missing. Det. Gaven bear-hugged § 87(2)(b) around his torso. § 87(2)(b) continuously squirmed his entire body within Det. Gaven's grasp. Det. Donohue attempted to secure § 87(2)(b)'s arms but had difficulty due to § 87(2)(b)'s squirming. Within 30 seconds, Det. Donohue placed one handcuff on § 87(2)(b) before they both fell on the ground with Det. Gaven. Det. Donohue stated that they all fell incidental to the general struggle and he did not attempt to take § 87(2)(b) down. Det. Donohue did not recall how § 87(2)(b) fell. He did not recall any officers placing their arms around the back of § 87(2)(b)'s neck to force him to the ground. Det. Donohue only recalled § 87(2)(b) sustaining a scrape to one of his elbows during the struggle. Det. Donohue was presented the photographs § 87(2)(b) took of his alleged injuries and he did not recall observing any injuries to § 87(2)(b)'s face, chin, or hands nor any actions by officers that could have resulted in such injuries.

Sgt. Pomerantz observed § 87(2)(b) attempt to punch Det. Gaven or Det. Donohue when they approached him. Det. Gaven and Det. Donohue stood on either side of § 87(2)(b) and generally reached for his arms to place them behind his back, which § 87(2)(b) resisted. Sgt. Pomerantz could not testify as to exactly how § 87(2)(b) resisted but noticed both detectives had apparent difficulty securing his arms since they were not immediately placed behind his back. They had his arms in their grips for less than a minute when Det. Gaven and Det. Donohue brought § 87(2)(b) to the ground by pulling him to the ground by his upper body. He did not observe either detective place their arm around the back of § 87(2)(b)'s neck to pull him to the ground. Sgt. Pomerantz did not recall how § 87(2)(b) landed. The only injury he recalled was a scrape to § 87(2)(b)'s knee or elbow. Sgt. Pomerantz was presented the photographs § 87(2)(b) took of his alleged injuries and he did not recall observing any injuries to § 87(2)(b)'s face, chin, or hands nor any actions by officers that could have resulted in such injuries.

In the Threat, Resistance, and Injury (TRI) Report Det. Gaven prepared regarding this incident, he indicated that § 87(2)(b) used a hand strike against, wrestled/grappled with, and pushed/shoved Det. Gaven (BR 17). Det. Gaven used a forcible takedown against § 87(2)(b) to

defend himself, Det. Donohue, overcome § 87(2)(b)'s resistance and aggression, and to prevent him from fleeing. § 87(2)(b) was injured, suffering a minor abrasion to his left elbow, and refused medical attention when offered. When presented the TRI report during his interview, Det. Gaven stated that he considered § 87(2)(b)'s attempts to break out of detectives' holds to be fleeing. The TRI included a photograph of the abrasion on § 87(2)(b)'s left elbow.

§ 87(2)(b)'s arrest report regarding this incident, prepared by arresting officer Det. Gaven, further indicated that § 87(2)(b) resisted arrest by flailing his arms and refusing lawful orders and that a forcible takedown was used to overcome his resistance (BR 18).

In situations in which it is not safe or appropriate to gain voluntary compliance from a subject, officers will use only the reasonable force necessary to gain custody of a subject. In determining whether the use of force is reasonable, members of the service should consider the nature and severity of the crime, actions taken by the subject, duration of the action, immediacy of the perceived threat, whether the subject is actively resisting custody, whether the subject is attempting to flee, the number of subject as well as their pedigree information compared to officers, subject's violent history if known, presence of hostile crowd, and whether the subject appears to be under the influence of any substances (NYPD Patrol Guide Procedure 221-01) (BR 19).

§ 87(2)(b), § 87(2)(g)

Allegation E – Force: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven restricted § 87(2)(b) breathing.

§ 87(2)(b) testified that while face down on the floor with his arms under the front of his torso, Det. Gaven grabbed and pulled his right arm away from out under his body. At this point, as officers had not announced they were police, § 87(2)(b) did not know Det. Gaven was a police officer and resisted by moving his arm in the opposite direction from which Det. Gaven pulled it and by rocking his body back and forth on the floor. Det. Gaven placed his knee, foot, or other body part on the middle of § 87(2)(b)'s spine, placing pressure there. This caused § 87(2)(b) breathing to be restricted though he did not verbalize this. He made audible shallow breaths and told Det. Gaven to get off of him. His voice was strained.

Neither § 87(2)(b) nor § 87(2)(b) testified over the phone to § 87(2)(b)'s breathing being restricted by officers.

Det. Gaven stated it was possible he or Det. Donohue landed on § 87(2)(b) during the initial takedown but did not specifically recall. Det. Gaven did not recall himself or Det. Donohue ever placing any downward pressure of § 87(2)(b)'s body or pinning him to the ground. He did not observe any physical or verbal indications from § 87(2)(b) that his breathing was restricted at any point.

Det. Donohue did not recall how § 87(2)(b) fell or if any detective fell on him. Once on the ground, § 87(2)(b) continued squirming his whole body on the ground, including kicking and moving his arms in all directions. Det. Donohue did not recall any officer getting on top of § 87(2)(b) or placing any downward pressure on him. § 87(2)(b) was generally yelling in an irate manner. Det. Donohue recalled no physical or verbal indications by § 87(2)(b) that his breathing was restricted. Since § 87(2)(b) was yelling freely without wheezing or straining, this indicated that he could breathe fine.

Sgt. Pomerantz did not recall either detective getting on top of § 87(2)(b) placing their body weight on him, or placing any downward pressure on his back while on the ground. He did not recall any indications § 87(2)(b)'s breathing was restricted, and stated the opposite was true since § 87(2)(b) yelled very loudly throughout his arrest. Sgt. Pomerantz did not recall what § 87(2)(b) was saying other than describing it as antagonistic toward officers.

§ 87(2)(b), § 87(2)(g)

Allegation F – Abuse of Authority: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven threatened § 87(2)(b) with the use of force.

§ 87(2)(b) stated that as Det. Gaven held § 87(2)(b)'s right arm above his back, he resisted. When § 87(2)(b) told Det. Gaven to get off of him, Det. Gaven told him twice, “Before I break your arm, stop resisting.” § 87(2)(b) realizing at this point he was interacting with the police, stopped resisting Det. Gaven’s actions.

§ 87(2)(b) and § 87(2)(b) testified to no statements by Det. Gaven during § 87(2)(b)'s arrest.

Det. Gaven and Det. Donohue both recalled telling § 87(2)(b) to give his hands and to stop moving or resisting but neither recalled any officer stating anything along the lines of, “Before I break your arm, stop resisting,” and recalled no threats of force by any officer during the incident.

Sgt. Pomerantz recalled no statements from Det. Gaven and Det. Donohue as they arrested § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation G – Force: At East § 87(2)(b) in Manhattan, Detective Timothy Donohue used physical force against § 87(2)(b)

§ 87(2)(b) stated that when he stopped resisting on the ground, Det. Gaven grabbed his left arm from under his body to place it behind his back. § 87(2)(b) leaned onto his right side to help free his left arm and Det. Donohue seemingly came out of nowhere and punched § 87(2)(b) in the stomach, causing him to momentarily lose his breath. This was the first physical interaction § 87(2)(b) testified to between himself and Det. Donohue. Det. Gaven then secured handcuffs on both of § 87(2)(b)'s wrists.

§ 87(2)(b) stated over the phone that he observed Det. Donohue or Det. Gaven punched § 87(2)(b) in the stomach.

§ 87(2)(b) did not testify over the phone to any punch by an officer.

Det. Donohue testified that he never punched § 87(2)(b) and did not recall any other officer do so.

Det. Gaven did not recall himself or Det. Donohue ever punch § 87(2)(b)

Sgt. Pomerantz did not observe any officer punch § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation H – Force: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven refused to provide his shield number to § 87(2)(b)

Allegation I – Force: At East § 87(2)(b) in Manhattan, Detective Timothy Donohue refused to provide his shield number to § 87(2)(b)

Allegation J – Force: At East § 87(2)(b) in Manhattan, Sergeant Michael Pomerantz refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) stated that as he was escorted to the police vehicle by Det. Gaven and Det. Donohue, § 87(2)(b) told them and Sgt. Pomerantz, “I’m going to need y’all badge numbers.” § 87(2)(b) Det. Gaven, and Det. Donohue were approximately twenty feet away from § 87(2)(b) with Sgt. Pomerantz slightly closer as he also walked to the vehicle. No officer responded to § 87(2)(b) s request.

Neither § 87(2)(b) nor § 87(2)(b) stated over the phone that § 87(2)(b) made any request for shield numbers. They both stated § 87(2)(b) only asked where officers were taking § 87(2)(b) No officer recalled anyone asking for their shield numbers.

§ 87(2)(b), § 87(2)(g)

Allegation K – Force: At East § 87(2)(b) in Manhattan, Detective Timothy Gaven used physical force against § 87(2)(b)

§ 87(2)(b) stated that once Det. Gaven brought him to the side door of the police vehicle, a van with two rows of back seats, the detective forcibly pushed § 87(2)(b) from outside the vehicle, causing him to fall onto the floor next to the second row of seats. § 87(2)(b) remained on the floor of the vehicle throughout transport.

Neither § 87(2)(b) nor § 87(2)(b) specified how officers placed § 87(2)(b) into the vehicle.

Det. Gaven and Det. Donohue both stated they placed § 87(2)(b) into the van without pushing him and that he sat in a seat directly behind the front passenger seat.

Sgt. Pomerantz stated that as he returned to the vehicle, Det. Gaven and Det. Donohue placed § 87(2)(b) in the back seat of the vehicle but did not observe how § 87(2)(b) got into it or if he was ever placed on the floor.

§ 87(2)(b), § 87(2)(g)

Allegation L – Abuse of Authority: At East § 87(2)(b) in Manhattan, Sergeant Michael Pomerantz interfered with § 87(2)(b) s use of a recording device.

Footage from § 87(2)(b) s cellphone captures this allegation (BR 05). There is no on-screen timestamp. At 0:00, § 87(2)(b) approaches the police vehicle as Det. Donohue enters the driver’s seat. Multiple unidentified individuals protest the officers arresting § 87(2)(b) At 0:08, § 87(2)(b) goes to the front passenger window where Sgt. Pomerantz is sitting. Sgt. Pomerantz holds a cellphone in his right hand and his left hand is free. The front passenger window rolls up as Det. Donohue drives away.

§ 87(2)(b) stated that, when he and the officers got in the police vehicle, the front side windows were open. § 87(2)(b) and § 87(2)(b) both approached the van with their phones to record the incident. Sgt. Pomerantz, in the front passenger seat, prevented them from recording by raising all the van’s windows and Det. Donohue, who got in the driver’s seat, drove off to the 25th Precinct stationhouse.

In his phone statement, § 87(2)(b) stated that he began recording the officers as they were getting in the vehicle. He never stated that any officer prevented him from recording by any means.

§ 87(2)(b) stated in his unverified statement that after Sgt. Pomerantz told him to keep his hands out of his pockets, he never pulled his phone from his pants pocket. He did not testify to § 87(2)(b) recording the incident.

Det. Donohue did not recall if § 87(2)(b) and § 87(2)(b) approached the vehicle or if they held phones or tried to record the incident. He did not recall if officers rolled up the windows of the vehicle. When presented the above-referenced footage, Det. Donohue did not recall who put up the windows, why they were put up, and was not aware of it being done to interfere with any recording. He was focused on pulling safely away from the scene.

Sgt. Pomerantz stated that § 87(2)(b) and § 87(2)(b) approached the vehicle once § 87(2)(b) and the officers were inside. They asked officers where they were taking § 87(2)(b) and officers told them the 25th Precinct. Sgt. Pomerantz did not notice anything in their hands and he did not know if the vehicle's windows were up or down. Sgt. Pomerantz stated no officer attempted to interfere with any recording, and explained that if officers had raised the windows, it would have been part of safety concerns as per procedure for transporting prisoners and not to interfere with any recording.

Det. Gaven did not recall § 87(2)(b) or § 87(2)(b) approaching the van before officers left the scene with § 87(2)(b) and did not recall them trying to record. Det. Gaven explained that, generally, he and his partners roll vehicle windows up if they are transporting a prisoner to avoid them trying to escape and did not know if any windows were rolled up to prevent anyone from recording.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation M – Abuse of Authority: At East § 87(2)(b) in Manhattan, Sergeant Michael Pomerantz failed to provide § 87(2)(b) with a business card.

Allegation N – Abuse of Authority: At East § 87(2)(b) in Manhattan, Sergeant Michael Pomerantz failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) and § 87(2)(b) did not testify to this allegation. It has been pled as it is undisputed that Sgt. Pomerantz stopped § 87(2)(b) and § 87(2)(b) during the incident.

Following his arrest, in which he initially resisted being handcuffed on the ground, § 87(2)(b) described himself as upset and restless since he believed he was arrested for no reason.

Sgt. Pomerantz stated that no officers provided business cards to § 87(2)(b) and § 87(2)(b) since they did not ask for any and because Sgt. Pomerantz did not think it was appropriate to locate and provide any business cards due to § 87(2)(b)'s arrest. § 87(2)(b) yelled and cursed at officers during his arrest and transport but Sgt. Pomerantz did not recall specific statements.

Det. Gaven did not recall any officers providing any business cards to anyone on scene. While escorting § 87(2)(b) to the vehicle after his arrest, § 87(2)(b) was screaming upset statements that Det. Gaven did not specifically recall.

Det. Donohue did not recall any officer provide business cards to § 87(2)(b) and § 87(2)(b). He described § 87(2)(b) as irate, generally yelling and cursing at officers, during his arrest and transport.

§ 87(2)(b)

An officer is to offer a business card to a person who is subject of certain law enforcement activity, including pedestrian stops, at the conclusion of any such activity that does not result in an arrest or summons except where exigent circumstances require immediate action by an officer (New York City Administrative Code 14-174) (BR 20).

§ 87(2)(b), § 87(2)(g)

Allegation O – Abuse of Authority: En route to the 25th Precinct stationhouse, Detective Timothy Gaven threatened § 87(2)(b) with the use of force.

Allegation P – Force: En route to the 25th Precinct stationhouse, Detective Timothy Gaven used physical force against § 87(2)(b)

During his transport, § 87(2)(b) stated that he told officers multiple times that he had a Citi Bike account and that if they gave him his phone, he could show them. Det. Gaven told § 87(2)(b) to shut up and that he was lying since the detective saw him trying to steal a bike. Det. Gaven told § 87(2)(b) that if he stated he had a CitiBike account one more time, he would throw his phone out the window. § 87(2)(b) did not mention his CitiBike account again. Det. Gaven asked twice for § 87(2)(b)'s name, but § 87(2)(b) refused to provide because he believed he was arrested for no reason. After the second time § 87(2)(b) refused, Det. Gaven punched him in the right jaw with a closed fist and told him that if he did not provide his name, he would not be going home. § 87(2)(b) then provided his name.

Det. Gaven stated § 87(2)(b) was highly agitated during his transport, screaming and cursing about having a CitiBike account and told detectives to check his phone multiple times. Det. Gaven told him they would check his phone at the stationhouse. Det. Gaven did not recall any officer tell § 87(2)(b) anything along the lines of, “If you say you have a CitiBike account one more time, I will throw your phone out of the window” or any threats to throw any of § 87(2)(b)'s property out of the moving vehicle. Det. Gaven stated he probably asked § 87(2)(b) for his name and other information in the vehicle but did not recall doing so and did not recall how § 87(2)(b) responded. No officer punched § 87(2)(b) during the ride.

Sgt. Pomerantz also testified that § 87(2)(b) was yelling and cursing aggressively during transport. He recalled no specific statements from § 87(2)(b) other than that he had a CitiBike account. Either during transport or at the stationhouse, § 87(2)(b) told officers to check his phone for his CitiBike account credentials. Sgt. Pomerantz did not recall how officers responded to § 87(2)(b)'s assertions within the vehicle. No officer threatened to throw his phone out of the window. Officers asked him to stop yelling. Sgt. Pomerantz recalled nothing else officers said during transport, including whether they tried to glean any of his pedigree information. Sgt. Pomerantz stated no officer punched him in the face.

§ 87(2)(b) continued to act irate, yelling and cursing generally at officers as they drove to the 25th Precinct stationhouse.

The only statements that Det. Donohue recalled officers making during § 87(2)(b)'s transport was continuously telling him to calm down and stop yelling, and that everything would be figured out at the stationhouse. He did not recall if § 87(2)(b) ever mentioned he had a CitiBike account. He did not recall any officer telling § 87(2)(b) “If you mention you have a CitiBike account one more time, I’ll throw your phone out the window,” and stated no officer ever threatened to throw his phone out the window. Det. Donohue did not recall officers ever trying to get pedigree information from § 87(2)(b) and stated no officer punched § 87(2)(b) in the vehicle.

§ 87(2)(b), § 87(2)(g)

Allegation Q – Discourtesy: At the 25th Precinct stationhouse, Detective Timothy Donohue spoke discourteously to § 87(2)(b)

Allegation R – Abuse of Authority: At the 25th Precinct stationhouse, Detective Timothy Donohue threatened § 87(2)(b) with the use of force.

Exterior surveillance footage from the 25th Precinct stationhouse captured the parking lot of the stationhouse at the time of these allegations but none provided an angle that depicted any pertinent events (BR 01).

§ 87(2)(b) described himself as restless and upset because he was arrested for no reason when Det. Donohue parked the police vehicle at the 25th Precinct. The officers exited the vehicle and Det. Gaven opened the right side-door for § 87(2)(b) who was still on the floor. Det. Gaven told § 87(2)(b) to get up and calm down before they went into the stationhouse. § 87(2)(b) told officers that he was arrested for no reason and refused to calm down. Det. Donohue went next to Det. Gaven and told § 87(2)(b) to shut up and called him “stupid,” a little idiot,” a little prick,” and “an asshole.” § 87(2)(b) stated it was possible that Det. Donohue made these statements during transport. § 87(2)(b) continued to act in a hyper manner and Det. Donohue lifted his shirt at the right part of his waist, revealing a holstered firearm, and rested his fingertips on the handle. § 87(2)(b) believed Det. Donohue did this to scare him. Det. Donohue told him to calm down and § 87(2)(b) complied.

Det. Gaven recalled at no point during the incident any officer call § 87(2)(b) “stupid,” “a little idiot,” “a little prick,” or “an asshole,” or use any profanity at all. Once parked in the lot of the stationhouse or in front, § 87(2)(b)’s initial agitated demeanor did not change and he was still yelling about his CitiBike account. All officers told § 87(2)(b) to calm down and Det. Gaven recalled no other ways officers tried to deescalate his agitation and upset. Det. Gaven never observed Det. Donohue display his holstered firearm to § 87(2)(b). He recalled no threats of force, verbal or physical, by officers.

Sgt. Pomerantz stated no officer called § 87(2)(b) “stupid,” “a little idiot,” “a prick,” or “an asshole,” and Sgt. Pomerantz recalled no profanity by officers. Det. Donohue never raised his shirt to display his firearm to § 87(2)(b). Sgt. Pomerantz never observed any officer threaten force or touch their firearm during the incident.

§ 87(2)(b), § 87(2)(g)

Allegation S – Force: At the 25th Precinct stationhouse, Detective Timothy Gaven hit § 87(2)(b) against a wall.

§ 87(2)(b) stated that, after he calmed down within the police vehicle, Det. Gaven held his arm and escorted him to the front desk of the stationhouse. Just outside the entrance of the stationhouse, Det. Gaven pushed § 87(2)(b) s back against the concrete façade of the building on the left of the door. He pinned him there by holding § 87(2)(b) s right upper arm with his left hand, hurting § 87(2)(b) s back. Det. Gaven advised him to remain calm inside the stationhouse and brushed his face with his free hand and stated, “Look at your face, look at what you’ve done to yourself.”

Det. Gaven stated § 87(2)(b) was continuously agitated up until his presentation at the front desk, but other than general upset, Det. Gaven did not recall any issues with escorting § 87(2)(b) into the stationhouse. Det. Gaven, right before entering the stationhouse, told § 87(2)(b) again he needed to calm down. § 87(2)(b) was standing next to or against the wall of the stationhouse by his own volition. No officer pushed or forced him against the wall.

Det. Donohue stated § 87(2)(b) continued his irate and agitated demeanor up until his presentation at the front desk. Det. Donohue did not recall any conversation or actions by officers that led to this de-escalation. He did not recall any officer pushing § 87(2)(b) against a wall outside the stationhouse.

Sgt. Pomerantz stated Det. Gaven and Det. Donohue walked an upset § 87(2)(b) from the vehicle into the stationhouse and the two detectives stopped him just outside the entrance to the stationhouse to tell him again he needed to calm down and stop yelling profanities. At that point, § 87(2)(b) stopped yelling. No officer pushed § 87(2)(b) against a wall outside the stationhouse.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- Det. Gaven has been a member of service for 15 years and has been subject of 27 other allegations in eight other CCRB complaints with four substantiations (see officer history):
 - 201212754 involved three substantiated allegations of a stop, a frisk, and other abuse of authority. The Board recommended Charges and he was found not guilty and the NYPD imposed no penalty.
 - 201808554 involved a substantiated allegation of a vehicle search. The Board recommended Command Level Instructions and the NYPD has yet to impose their own disposition.
 - Det. Gaven's CCRB history does not reflect a pattern pertinent to this investigation.
- Det Donohue has been a member of service for 16 years and has been subject of 12 other allegations in six other CCRB complaints with no substantiations (see officer history):
 - Det. Donohue's CCRB history does not reflect a pattern pertinent to this investigation.

- Sgt. Pomerantz has been a member of service for 11 years and has been subject of 31 other allegations in 14 other CCRB complaints with two substantiations (see officer history):
 - 201200816 involved a substantiated allegation of a frisk. The Board recommended Charges and the NYPD imposed Instructions.
 - 201801182 involved a substantiated allegation of a search of person. The Board recommended Command Discipline B and the NYPD took no disciplinary action.
 - Sgt. Pomerantz's CCRB history does not reflect a pattern pertinent to this investigation.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On March 19, 2020, the New York City Comptroller's Office confirmed no Notices of Claim had been filed regarding this incident (BR 25).
- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Squad No.: 11

Investigator: <u>Benjamin Shelton</u>	Inv. Benjamin Shelton	4/13/20
Signature	Print Title & Name	Date

Squad Leader: <u>Edwin Pena</u>	IM Edwin Pena	04/14/20
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date